(2012) 04 MAD CK 0007

In the Madras High Court

Case No : Review Application No''s. 38, 39 and 40 of 2012 in Tax Case (Appeal) No''s. 308, 309 and 1620 of 2005

Tablets (India) Ltd. APPELLANT

Vs

CIT RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Income Tax Act, 1961 — Section 143(2), 143(3), 147, 148, 251

Citation : (2012) 04 MAD CK 0007

Hon'ble Judges : P.P.S. Janarthana Raja, J;D. Murugesan, J

Bench : Division Bench

Advocate : Anita Sumanth, for the Appellant; T.R. Senthil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The present review applications are filed as against the judgment made in Tax Case (Appeal) Nos. 308, 309 and 1620

of 2005 dated 9-1-2012. The petitioner is a public limited company dealing in the manufacture of medicines. The relevant assessment years are

1995-96, 1994-95 and 1993-94 respectively. For the assessment year 1994-95, the corresponding accounting year ended on 31-3-1994. The

assessee filed its return on 29-11-1994 disclosing the income of Rs. 24,71,905. The AO issued notice u/s 143(2) of the IT Act and completed the

assessment u/s 143(3) of the Act and determined the total income at Rs. 72,44,250. In respect of assessment year 1995-96, the corresponding

accounting year ended on 31-3-1995. The AO, giving affect to the order of the CIT(A), completed the assessment u/s 143(3) read with section

251 of the Act and determined the total income at Rs. 4,95,060. For the

assessment year 1993-94, the corresponding accounting year ended on

31-3-1993. The AO completed the original assessment on 29-3-1996 and later issued notice u/s 148 of the Act on the ground that there was

escapement of income within the meaning u/s 148 of the Act. Reassessment was completed u/s 143(3) read with section 147 of the Act and the

AO determined the total income at Rs. 30,06,430. In all the above assessment years, the AO disallowed the assessees claim to the payment of

commission made to (i) Rahul Enterprises, Chennai, and (ii) Rahul Steel Industries. Aggrieved by that order, the petitioner/assessee preferred

appeals before the CIT(A), who allowed the appeals. Aggrieved by that order, the Revenue filed appeals before the Tribunal. The Tribunal, in

respect of assessment years 1994-95 and 1995-96, has dismissed the Revenues appeal by common order and in respect of assessment year

1993-94, on the ground that there is no material available on record to substantiate the claim, disallowed the commission payment and held against

the assessee. In respect of the assessment years 1994-95 and 1995-96, the Revenue filed appeals u/s 260A of the Act in Tax Case (Appeal)

Nos. 308 and 309 of 2005 before this Court and when the matter was taken up, this Court admitted the appeals on 7-12-2005 on the following

substantial question of law:

Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the commission payments made to M/s. Rahul

Industries and M/s. Rahul Enterprises are allowable expenditure?

In respect of assessment year 1993-94, the assessee filed an appeal in Tax Case (Appeal) No. 1620 of 2005 u/s 260A of the Act and this Court

admitted the same on 22-12-2005 on the following substantial questions of law:

1. Whether the Tribunal is right in law in holding that the commission payments made were hit by Explanation to section 37 of the IT Act?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the payments made by the appellant to its

employees and other firms are not wholly and exclusively for the purpose of its business?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the payments in question are against public policy

and are not deductible payment u/s 37(1) of the IT Act?

The above said appeals were disposed of by common judgment after elaborately considering the issue in paras 8 to 12 and answered the

questions in favour of the Revenue and against the assessee. The petitioner/ assessee has filed the present review applications to review the said

judgment and to adjudicate upon the issue raised at the time of arguments giving rise to a substantial question of law as to ""whether the order of the

Tribunal dt. 22nd Aug., 2005 is right in law in not referring the issue pertaining to allowability of payment of commission to Rahul Industries and

Rahul Enterprises to a Larger Bench of the Tribunal in view of the earlier decision of the co-ordinate Bench of the Tribunal dt. 14-9-2004 in

accordance with the accepted principles of consistency of decision on identical facts and rationale of this Court in the case of Commissioner of

Income Tax, Central Vs. L.G. Ramamurthi and Others,

2. The learned counsel appearing for the petitioner/assessee vehemently contended that the Tribunal is bound by the decision of a co-ordinate

Bench. When the issue involved is common in all the assessment years and there is no factual difference in respect of the issue, they have to follow

the decision of the co-ordinate Bench. When the subsequent Bench of the Tribunal was inclined to take a contrary view to that of the earlier

Bench, it should have referred the matter to a Larger Bench rather than merely taking a contrary view on the same set of facts. Therefore, the

Tribunal has failed to follow the accepted procedure and proceeded to take a contrary view which is violative of the principles enunciated in the

judgment of this Court in the case of CIT v. L.G. Ramamurthi & Ors. (supra), wherein this Court has held thus:

If the Tribunal wants to take an opinion different from the one taken by an earlier Bench, it should place the matter before the President of the

Tribunal so that he could have the case referred to a Full Bench of the Tribunal consisting of three or more members for which there is provision in

the IT Act itself.

In the present case, the order of the Tribunal for the assessment year 1993-94 is contrary to the earlier Bench of Tribunal and inconsistent with the

order of this Court cited above. The learned counsel appearing for the petitioner further submitted that the petitioner has made oral arguments

regarding the same, which was not considered and hence, this Court has got the power to review the matter u/s 260A of the IT Act and relied on

the Full Bench decision of Patna High Court in D.N. Singh Vs. Commissioner of Income Tax and Another to support her proposition and has also

relied on the provisions of section 260A of the IT Act and seeks to review the common judgment made by this Court by adjudicating the

submissions advanced during the course of hearing.

3. The learned counsel appearing for the Revenue submitted that no argument was advanced at the time of hearing and nothing was stated in the

grounds of appeals and no question of law was raised in this regard. He further submitted that this Court has no power to review the matter under

the IT Act and relied on the decision of Madhya Pradesh High Court in the case of Deepak Kumar Garg Vs. Commissioner of Income Tax, to

support his proposition. He further submitted that when the petitioner has not at all argued the said issue at the time of hearing of the tax case

appeals, this Court has correctly considered the admitted questions of law and answered the same as against the assessee on merits and, hence,

the review applications should be dismissed.

4. Heard the learned counsel appearing on either side and perused the documents available on record. It is pertinent to note that the issue raised

now was not at all raised in the tax case appeals. Further it is seen that the questions of law raised by the petitioner/assessee in the tax case appeals

are related to the payment of commission. When the tax case appeals came up for admission, the said plea was not raised and, therefore, this

Court admitted the appeals on the above stated substantial questions of law. We have gone through the tax case appeals. Even in the statement of

facts, nothing was mentioned about the present controversy. The only issue raised in the tax case appeals relates to the disallowance to the

payment of commission. Therefore, this Court considered the same and passed orders. Now the learned counsel appearing for the

petitioner/assessee has stated in the Review Applications that the argument in respect of jurisdiction of the Tribunal was raised orally at the time of

hearing. It is incorrect. The Court considered what was stated in the grounds of appeal and substantial questions of law raised and arguments

advanced by the counsel. What was not raised was not considered. No oral argument was made at the time of hearing. The scope of review was considered by the apex Court in the case of S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, and in para 5 the Supreme Court has

considered Order XLVII, r. 1, CPC, and held as follows:

A reading of the above provision makes it clear that review is permissible (a) from the discovery of new and important matter or evidence which,

after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake;

(c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the

party may apply for a review of the judgment or order of the Court which passed the decree or order. The provision also makes it clear that an

application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error

apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. An error

contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In

other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the

face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the

materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in

favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same

issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this

background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of tie tests formulated above.

After taking into consideration the principles enunciated in the said judgment, we are of the view that in the present case, the petitioner/assessee

has failed to establish that the case falls within any of the ingredients stated in the above judgment.

In respect of the Courts power to review, we are of the view that the Court has power to review provided there is a case for review and we agree with the Full Bench of Patna High Court cited supra and disagree with the Madhya Pradesh High Court cited supra by the Revenue. With regard

to the admission of any other substantial question of law not formulated, this Court has power to formulate new question of law provided the Court

records the reasons. Under these circumstances, the review applications are devoid of merits and the same are dismissed. No costs.

